

### **REMARKS**

Before entry of this Amendment, claims 1-23 were pending in this application. Claims 22 and 23 are being canceled without prejudice in response to the finalized restriction requirement. Claims 1 and 2 are being voluntarily amended for clarity to refer to "light ... that has not passed through the layer of phosphor material", for proper antecedent basis and for consistency with, for example, claim 3. No new matter has been added. After entry of this Amendment, claims 1 – 21 are pending. Reconsideration of this application is respectfully requested.

The undersigned thanks Examiner Louie for the courtesy of an in-person interview held yesterday at the USPTO offices in Alexandria, Virginia.

### **§ 102 Rejections**

At the interview, the undersigned reviewed the elements of independent claims 1 and 2, pointing out where those elements are present in FIGS. 9-10 and 11-13 of the present specification. The undersigned also pointed out that the "interference reflector means" of claim 1 and the "interference reflector" of claim 2 are plainly not taught in U.S. Patent 5,959,316 (Lowery). Instead, the "reflector 16" of Lowery is simply a recessed reflective portion of a conventional lead frame 12. See Lowery at, for example, col. 2 lines 4-30.

Since Lowery does not teach every element of independent claims 1 or 2, it is axiomatic that it cannot anticipate those claims, and it also cannot anticipate dependent claims 3-4, 6, 8-10, or 13. The Office Action's rejection under 35 U.S.C. § 102 of those claims therefore cannot be sustained and should be withdrawn.

Applicants also disagree with a number of the assertions in the Office Action that Lowery teaches the subject matter of the cited dependent claims, but such disagreement is moot in view of the shortcomings of Lowery mentioned above.

### **§ 103 Rejections**

The Office Action rejected claims 5 and 7 under 35 U.S.C. § 103(a) as unpatentable over Lowery in view of U.S. Patent 5,982,092 (Chen). These rejections cannot be sustained.

Both claims 5 and 7 incorporate the “interference reflector” from claim 2. Yet, neither Lowery nor Chen teach such a reflector, and for that reason alone the rejection of claims 5 and 7 should be withdrawn. Moreover, in connection with claim 7, even if the Examiner’s bald assertion—that changes in shape are obvious—were accurate and relevant, that is insufficient as a basis for rejecting claim 7 since that claim also recites certain spatial relationships (“the LED and the layer of phosphor material are disposed at foci of the ellipsoid”) that were not addressed in the Office Action. A *prima facie* case of obviousness has thus not been made for claim 7, and for that additional reason the rejection of claim 7 should be withdrawn.

The Office Action went on to reject claims 11-12, 14-19, and 21 under 35 U.S.C. § 103(a) as unpatentable over Lowery in view of U.S. Patent 6,717,348 (Takahashi). These rejections cannot be sustained. Each of these claims incorporate the “interference reflector” from claim 2, with respect to which the deficiency of Lowery has already been pointed out. Although Takahashi discusses Fabry-Perot interference to modulate excitation light (see col. 12 line 16 ff.), there is nothing in Takahashi, Lowery, or the combination suggested in the Office Action that teaches or suggests an interference reflector in combination with a layer of phosphor material and an LED as set forth in claim 2, from which each of claims 11-12, 14-19, and 21 directly or indirectly depend. The rejection should be withdrawn.

Finally, the Office Action rejected claim 20 under 35 U.S.C. § 103(a) as unpatentable over Lowery in view of U.S. Patent 6,652,996 (Steklenski et al.). Applicants also traverse this rejection. Although Steklenski describes certain polymeric multilayer interference reflectors, the only rationale given in the Office Action to modify Lowery with the teaching of Steklenski is “in order to provide a uniform reflection across visible wavelength”. But Lowery, the primary reference, provides no indication that such a feature is desirable, or on the other hand that such a feature is lacking from its disclosed embodiments. The Examiner is also reminded that the references must be considered as a whole. MPEP § 2141. In that regard, Steklenski et al. teaches that “not just any polymeric multi-layer reflector can be used in the practice of this invention”, and that “an essential feature of the present invention is the use of polymeric multi-layer reflectors that reflect most light striking them at ‘high incident angles’ and transmit and absorb most light striking them at ‘low incident angles’”. (Col. 4 lines 40-54.) The Office Action has provided no evidence that such a feature would be acceptable, much less beneficial, in the

invention of Lowery. Instead, the Office Action has impermissibly used Applicants' disclosure as a blueprint for piecing together different aspects of the references to defeat patentability – the essence of the tempting but forbidden zone of hindsight reconstruction. *See In re Dembiczak*, 50 USPQ2d 1614, 1616-17 (Fed. Cir. 1999). The rejection of claim 20 under 35 U.S.C. § 103(a) should be withdrawn.

CONCLUSION

In view of the foregoing, pending claims 1-21 are submitted to be in condition for allowance, the early indication of which is earnestly solicited.

Respectfully submitted,

3 August 2005  
Date

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